

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:

VILLAGE OF BURNHAM, COOK
COUNTY, ILLINOIS, an Illinois
Municipal Corporation,

Petitioner,

V

No. T14-0067

INDIANA HARBOR BELT RAILROAD
COMPANY, CSX TRANSPORTATION,
INC., NORFOLK SOUTHERN RAILWAY
COMPANY, and the CHICAGO SOUTH
SHORE & SOUTH BEND RAILROAD.

Respondents,

Petition for an order of the Illinois Commerce Commission to permit the construction and maintenance of a multi-use trail bridge over the tracks of the Indiana Harbor Belt Railroad, CSX Transportation, Inc., and the Norfolk Southern Railway Company and to permit the construction of an at-grade crossing of a multi-use trail at the track of the CSX Transportation, Inc., at Green Bay Avenue (near CSX AAR/DOT #163651M, railroad milepost 1.33) and to permit the reconstruction of at-grade crossings of tracks of the CSX Transportation, Inc., Norfolk Southern Railway Company, and

1 the Chicago South Shore & South)
Bend Railroad at Burnham Avenue)
2 all located in the Village of)
Burnham, Cook County, Illinois.)
3

4 Chicago, Illinois
August 5, 2014
5

6 Met pursuant to notice at 10:00 a.m.

7 BEFORE:

8 MS. LATRICE KIRKLAND-MONTAQUE,
Administrative Law Judge.

9 APPEARANCES:

10 MR. DERS ANDERSON
Openlands
11 Greenways Director
25 East Washington Street
12 Suite 1650
Chicago, Illinois 60602
13

14 -and-

15 MR. DAVID D. LANDEWEER
URS CORPORATION
Senior Manager
16 Civil Department Head
100 South Wacker Drive
17 Suite 500
Chicago, Illinois 60606
18 appeared for Village of Burnham;
19
20
21
22

1 APPEARANCES: (Cont'd.)

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3 NISEN & ELLIOTT, LLC, by
4 MR. JOSEPH A. PTASINSKI
5 200 West Adams Street
6 Suite 2500
7 Chicago, Illinois 60606
8 appeared for Chicago South Shore
9 & South Bend Railroad Company;

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8 MR. ROGER A. SERPE
9 55 West Monroe Street
10 Suite 1600
11 Chicago, Illinois 60603
12 appeared for Indiana Harbor
13 Belt Railroad Company;

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12 DALEY MOHAN GROBLE, P.C., by
13 MR. RAYMOND H. GROBLE, III
14 55 West Monroe Street
15 Suite 1600
16 Chicago, Illinois 60603
17 appeared for Norfolk Southern
18 Railway Company;

16

17 MacCABE & McGUIRE, by
18 MR. DAVID R. SCHMIDT
19 77 West Wacker Drive,
20 Suite 3333
21 Chicago, Illinois 60601

20 -and-

21

22

1 APPEARANCES: (Cont'd.)

2

3 ROCK FUSCO & CONNELLY, LLC, by
4 MR. PAUL D. STREICHER
5 321 North Clark Street
6 Suite 2200
7 Chicago, Illinois 60654
8 appeared for CSX Transportation, Inc.

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16 SULLIVAN REPORTING COMPANY, by
17 Teresann B. Giorgi, CSR
18 084-000977

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I N D E X

<u>Witnesses:</u>	<u>Dir.</u>	<u>Crx.</u>	<u>Re-</u> <u>dir.</u>	<u>Re-</u> <u>crx.</u>	<u>By</u> <u>Examiner</u>
NONE					

E X H I B I T S

<u>APPLICANT'S</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
NONE		

1 JUDGE KIRKLAND-MONTAQUE: By the power vested in
2 me by the State of Illinois and the Illinois
3 Commerce Commission, I now call Docket T14-0067.

4 This is in the matter of the Village
5 of Burnham, Cook County, Illinois, Petitioner,
6 versus the Indiana Harbor Belt Railroad Company,
7 CSX Transportation, Inc., Norfolk Southern Railway
8 Company, and the Chicago South Shore & South Bend
9 Railroad.

10 And we are here on a petition for an
11 order from the Commission to permit the construction
12 and maintenance of a multi-use trail bridge over the
13 tracks of the aforesaid railroads.

14 May I have appearances, please.

15 Let's start with the Village of
16 Burnham.

17 MR. ANDERSON: My name is Ders Anderson. I'm
18 the Greenways Director with Openlands, which is a
19 non-for-profit and we've been requested by the
20 Village of Burnham and Mayor Polk to represent the
21 Village.

22 JUDGE KIRKLAND-MONTAQUE: Can you spell your

1 name, please.

2 MR. ANDERSON: Sure.

3 D-e-r-s, Anderson, A-n-d-e-r-s-o-n.

4 JUDGE KIRKLAND-MONTAQUE: And, I'm sorry, you've
5 been requested to --

6 MR. ANDERSON: To represent the Village in an
7 administrative project. I'm not an attorney. I'm a
8 planner. The Village doesn't have professional
9 staff on board and so we play this role out quite
10 often in getting trail development moving.

11 JUDGE KIRKLAND-MONTAQUE: Okay. Thank you.

12 And let's go to Indiana Harbor.

13 MR. SERPE: Roger, R-o-g-e-r, Serpe, S-e-r-p-e,
14 General Counsel with the Indiana Harbor Belt
15 Railroad.

16 JUDGE KIRKLAND-MONTAQUE: And CSX?

17 MR. STREICHER: Good morning, your Honor.

18 My name is Paul Streicher,
19 S-t-r-e-i-c-h-e-r. I represent CSX Transportation,
20 Inc.

21 MR. SCHMIDT: Good morning, your Honor.

22 David Schmidt also on behalf of

1 CSX Transportation. S-c-h-m-i-d-t.

2 JUDGE KIRKLAND-MONTAQUE: Okay. Norfolk

3 Southern?

4 MR. GROBLE: Raymond Groble, G-r-o-b-l-e, on

5 behalf of Norfolk Southern, Judge.

6 JUDGE KIRKLAND-MONTAQUE: Chicago South Shore?

7 MR. PTASINSKI: Joseph Ptasinski, spell that,

8 Joseph P-t-a-s-i-n-s-k-i, on behalf of Chicago South

9 Shore.

10 JUDGE KIRKLAND-MONTAQUE: Let the record reflect

11 that Commission -- I'm sorry.

12 MR. LANDEWEER: David Landeweer with URS, the

13 engineer for the project.

14 JUDGE KIRKLAND-MONTAQUE: Okay. Thank you.

15 Let the record reflect that Commission

16 Staff is not present and that we've made a call to

17 find out whether or not he will be attending. We

18 have not heard back yet. So we're going to proceed

19 without him. As this is only a status hearing, I

20 think we can proceed to move forward.

21 Again, this is a status. So why don't

22 I open the floor to the Village to give us an update

1 on where things stand with the petition and the
2 plans.

3 MR. ANDERSON: Sure.

4 Without giving you a long history of
5 this project, this is a connection that has been
6 pursued by the Illinois Department of Natural
7 Resources in a number of different communities along
8 what's called the Burnham Greenway which stretches
9 from Van Vliissingen, V-l-i-s-s-e-n-g-e-n, (sic)
10 Boulevard on the north to the Village of Lansing on
11 the south. And then that trail continues under the
12 name of the Pennsey Greenway into Indiana.

13 The Burnham Greenway is also one of
14 the critical trail connections in what's known as
15 the Grand Illinois Trail, which is a 500-mile loop
16 of Northern Illinois, which was proposed by the
17 Illinois Department of Natural Resources almost
18 20 years ago. And, again, a large number of
19 communities have been working to complete this
20 continuous trail system.

21 So as is normal in trail developments
22 the most difficult, the more expensive gaps are the

1 last to be done. And this is a tough one. And the
2 Village of Burnham has said that they are willing to
3 assume the maintenance and management of the trail.
4 They economically were not in the position to be
5 able to fund the trail. And so over the last
6 several years, through the assistance of
7 Senator Durbin's office, we've obtained engineering
8 monies to accomplish the final engineering on the
9 trail and that's been under a contract with URS.

10 And that's really what's brought us to
11 this meeting today is to try to finish that final
12 engineering, get the necessary sign-offs from the
13 railroads, submit it to IDOT, Illinois Department of
14 Transportation, and then move forward with
15 construction funding.

16 The construction funding is
17 substantially in place -- I'm sorry -- also on
18 the engineering, I just should mention that
19 ArcelorMittal Steel Company has checked in the --
20 what's needed as local match for federal funding.
21 And so that's what has allowed the Village of
22 Burnham to continue pursuing this trail. As I said

1 in the beginning, economically they did not have the
2 budget to be able to put into the development of
3 this trail, even a 20 percent match.

4 So the construction monies are
5 substantially in place. The Illinois Commerce
6 Commission has budgeted in their 2015-16 fiscal year
7 for what are generically known as Safe Crossing
8 funds. We also will be utilizing probably CMAC
9 funding as the major funding for the construction of
10 the trail. The ICC commitment would suffice for the
11 20 percent local match that's always needed.

12 We've been in contact -- and I've
13 personally been in contact with a number of railroad
14 representatives going back a number of years. The
15 ID&R, George Bellovics, B-e-l-l-o-v-i-c-s, who is
16 the Grand Illinois Trail coordinator for the IDNR.

17 We met with Indiana Harbor Belt two or
18 three years ago in their offices in Hammond. I've
19 been in contact -- and we've submitted the
20 preliminary engineering at that point, asking for
21 any comment they may have.

22 I've since submitted for --

1 representing the Village -- the work that URS has
2 done to all the railroads last year, 2013.

3 There was also a period of time --
4 there's a parcel of property at the south end of
5 this project, located north of State Road, you know,
6 about a quarter mile long that, unknown to the
7 Norfolk & Southern, was being taxed by Cook County
8 and those taxes were paid by Norfolk & Southern only
9 because Cook County considered this outlying parcel
10 as connected to their other active rail lines.

11 And there's also a -- Dave, maybe you
12 can help me here. I'm not seeing the plat of the
13 parcels -- but there is an Indiana Harbor Belt use
14 easement -- active use easement -- on this part of
15 the corridor, which is owned by Norfolk & Southern.

16 So Cook County had been taxing this
17 parcel and it had included that parcel (indicating).
18 You know, I had accomplished probably half of those
19 in phone conversations with Norfolk & Southern's
20 officials all over their offices, countrywide,
21 basically, trying to basically say, This is your
22 parcel. Because this is an acquisition that is

1 necessary for the trail corridor.

2 Currently the IDNR is discussing the
3 acquisition of that parcel with Norfolk & Southern.

4 And so, I think generally, that's the
5 current status of the activity that's going on at
6 this point.

7 MR. SCHMIDT: Where is that parcel located in
8 conjunction with Burnham Avenue and Brainard?

9 MR. ANDERSON: It's north of State Road and it's
10 a parcel that then terminates at the active rail
11 corridor parcels. You know, this area here
12 (indicating).

13 MR. SCHMIDT: On this map that you've got, on
14 here, where is --

15 MR. ANDERSON: Brainard --

16 MR. SCHMIDT: Where is Burnham?

17 MR. ANDERSON: This is Burnham Avenue,
18 north/south road (indicating).

19 So a better way, maybe, to describe
20 the parcel is that it's immediately north of the
21 current trail in the Cook County --

22 MR. SCHMIDT: Okay. I see.

1 MR. ANDERSON: -- Forest Preserve District on
2 the south side of State Road.

3 MR. SCHMIDT: On the north side of State Road?

4 MR. ANDERSON: In Cook County it's on the south
5 side of State Road. The vacant parcel is on the
6 north side of State Road.

7 MR. SCHMIDT: The north side.

8 MR. ANDERSON: And I'd be willing to give you a
9 plat of that parcel, if you like, before we leave
10 today.

11 MR. SCHMIDT: The reason why I asked that
12 question is because Mr. Streicher and I have been to
13 this location. And we know that there are major
14 Commonwealth Edison electrical towers in that area
15 north of State Road. So we were curious when we
16 were there as to had an easement for the use of that
17 property and who owned that property.

18 And that's why I'm asking you what
19 you're talking about in terms of acquiring property
20 because our thought process was, Who owns this
21 property? Because when you cross over State Road --

22 Is it State Street or State Road?

1 MR. ANDERSON: State Road.

2 MR. SCHMIDT: -- State Road, I mean, you go into
3 what is kind of like a quasi-industrial park area --

4 MR. ANDERSON: Right.

5 MR. SCHMIDT: -- and then with the -- a couple
6 of tower grids in place, whatever they're called,
7 electrical towers, and then you go a little further
8 and you get to the railroad tracks.

9 MR. ANDERSON: Right.

10 MR. SCHMIDT: So the property that you're
11 talking about and what I'm describing, that's
12 supposedly Norfolk & Southern property?

13 MR. ANDERSON: Yes.

14 MR. GROBLE: I would like to have that plat.

15 MR. ANDERSON: Sure.

16 And I should have mentioned the
17 participation of Commonwealth Edison in this whole
18 project. They've been critical participants. We
19 have a letter of support from them that was issued
20 probably about three years ago. URS has been
21 working very closely with the ComEd engineering
22 staff in locating the trail. It will be on the

1 Commonwealth Edison corridor paralleling the active
2 rail line from the Grand Calumet River down to the
3 active rail corridor and ComEd is fully supportive
4 of the project.

5 MR. LANDEWEER: And if I could give a brief
6 summary of the engineering --

7 JUDGE KIRKLAND-MONTAQUE: Sure.

8 MR. LANDEWEER: -- where the engineering stands
9 at this point.

10 As Mr. Anderson mentioned, the
11 existing trail ends right now at State and then from
12 State we will be within the Norfolk & Southern
13 parcel and start to climb with retaining walls and a
14 series of reversed curves. And at this point here
15 we will have a bridge, a brand-new bridge, that will
16 be over all of the railroads, Indiana Harbor Belt,
17 CSX and the Norfolk & Southern (indicating). And as
18 soon as we cross the final track, then our bridge
19 starts to come down to a point where we get down to
20 existing grade.

21 MR. STREICHER: And that will go on the east
22 side of their main line?

1 MR. ANDERSON: Yes.

2 MR. LANDEWEER: Yes, on the east side of the
3 Norfolk & Southern spur line?

4 MR. STREICHER: Yes.

5 MR. LANDEWEER: The east side.

6 MR. SCHMIDT: And isn't there wetlands right
7 there on both side?

8 MR. LANDEWEER: Not really. There's some
9 isolated wetlands that have been mapped as part of
10 the preliminary engineering. They're kind of
11 scattered here and there. But there are some
12 wetlands impact that we will have, definitely.

13 But this scenario right here, I don't
14 believe was determined to be a wetland (indicating).

15 MR. ANDERSON: There was a delineation
16 accomplished by the IDNR probably about six or seven
17 years ago.

18 MR. LANDEWEER: Right.

19 So we have met several times with
20 ComEd and they have approved our alignment of the
21 bridge and the trail and the vertical clearances
22 that we're going to be having between some of the

1 overhead lines. Because, obviously, as you know,
2 there's overhead lines everywhere right at this
3 location. But we've snaked it between the towers
4 and underneath the lines and they have approved that
5 and we have submitted the agreement to ComEd for
6 their processing.

7 So then as we continue north we're in
8 the ComEd corridor. We also have a new bridge over
9 the Grand Calumet River. And it's at this point
10 here then that we come out on through this side
11 street, this residential street (indicating). We
12 have it coming out between a spur line that's CSX-
13 owned and the Norfolk & Southern spur line. There's
14 going to need to be some work at that intersection.
15 It's kind of -- the sidewalk and the roadway are
16 kind of merged all into one pavement at that
17 location.

18 MR. SCHMIDT: Yeah, those tracks are about maybe
19 10 to 15 feet apart.

20 MR. LANDEWEER: Right. They're pretty close.

21 So we're going to be more or less
22 crossing this line at the sidewalk (indicating). I

1 mean, we're going to be actually entering their
2 track.

3 Ideally what we would like to do is
4 actually have a separate crossing -- a new crossing
5 that's off of the roadway to provide more of a clean
6 crossing point and coming out into the street here
7 (indicating).

8 MR. SCHMIDT: You mean over the spur track?

9 MR. LANDEWEER: Over the spur track, right.

10 MR. SCHMIDT: But that's not part of this
11 drawing --

12 MR. LANDEWEER: No --

13 MR. SCHMIDT: -- and these plans.

14 MR. LANDEWEER: -- because we -- in
15 conversations that we've had with the CSX in the
16 past, they have indicated that they do not want a
17 new crossing at that location. It's our preference
18 to have a new crossing there, but worst-case
19 scenario we would have to snake it in between these
20 two tracks here and come into the street at that
21 location.

22 MR. SCHMIDT: And by "snake in" you're talking

1 about snaking in the trail.

2 MR. LANDEWEER: Yes.

3 MR. SCHMIDT: And how wide is this trail?

4 MR. LANDEWEER: In this segment right here, it's
5 wider than the normal 10 feet because ComEd also is
6 very interested in this trail also because they want
7 to use this for access to their substation. Right
8 now their only access is a bridge, that you can see
9 on this aerial here, and it comes off of the bridge
10 on Burnham. And that's not something that they want
11 to keep and maintain.

12 So they are looking actually to
13 participate in the construction of this trail with a
14 widened trail or a wider trail than normal so they
15 can actually have access to their substation. I
16 think the width that they're looking at here is
17 16 feet from this location down to about here where
18 they can have a separate new track (indicating).

19 MR. SCHMIDT: And what's the width?

20 MR. LANDEWEER: His width would be a 10-foot
21 trail. The bridge actually will be 12 feet wide
22 over the railroads.

1 MR. SCHMIDT: And how high?

2 MR. LANDEWEER: 23 feet is the clearance that

3 we're providing. And we had some initial

4 conversation with, I believe it was the Norfolk &

5 Southern, and they initially wanted it higher, but

6 then they did look at that issue again and they said

7 that 23 feet is adequate for them.

8 MR. GROBLE: Yeah. I would say anything they've

9 said is going to be subject to their engineering --

10 MR. LANDEWEER: I'm sure.

11 MR. GROBLE: There hasn't been any --

12 MR. LANDEWEER: We have submitted plans a little

13 over a year ago and there have been conversations

14 between our office and --

15 MR. GROBLE: Oh, I understand that. But that's

16 different than them having preliminary

17 engineering --

18 MR. LANDEWEER: Right. Oh, I understand. I

19 understand.

20 And then at this point here we are --

21 the trail will actually be on street (indicating).

22 And then coming up here --

1 MR. SCHMIDT: There's a park here (indicating).
2 MR. LANDEWEER: Yes.
3 And then it comes off street again
4 here and then it curves around to within the Burnham
5 Road right-of-way where we cross the CSX line
6 (indicating).
7 MR. GROBLE: Help me.
8 MR. LANDEWEER: CSX here (indicating).
9 MR. STREICHER: CSX, IHB and Norfolk & Southern?
10 MR. SCHMIDT: I think -- or is it the other way,
11 CSX, Norfolk & Southern, IHB?
12 We've got a lot of railroad locations.
13 There's three different crossings.
14 But that's why at those locations all
15 you're looking for is extending the sidewalks,
16 right?
17 MR. LANDEWEER: Widen the --
18 MR. SCHMIDT: Widen the sidewalks.
19 MR. ANDERSON: Putting in pedestrians cross
20 gates.
21 MR. LANDEWEER: Right.
22 And then with the South Shore -- we've

1 actually just had recent conversations with IDOT and
2 somebody from South Shore regarding the work that
3 they're -- I guess are going to be doing this year
4 at this crossing.

5 MR. PTASINSKI: Yes.

6 MR. LANDEWEER: So we've sent them plans. And
7 we made some minor adjustments in our trail width
8 and location there so that they could incorporate it
9 into their current plan. But our project will still
10 actually build the crossing, is from what I
11 understand.

12 MR. SCHMIDT: And then the trail continues --

13 MR. LANDEWEER: Oh, at the north end?

14 MR. SCHMIDT: Right.

15 MR. LANDEWEER: Our trail then ends at Brainard
16 Avenue. And then from Brainard --

17 MR. SCHMIDT: And how far is it from Brainard to
18 where the trail now currently exists?

19 MR. LANDEWEER: It's about a mile, mile and a
20 half?

21 MR. ANDERSON: Yes. It would be at 126th
22 Street, which is the main entrance, William Powers

1 State Recreation Area.

2 MR. SCHMIDT: Okay. So when is that leg of the
3 trail supposedly going to be constructed to match up
4 with Brainard?

5 MR. ANDERSON: It will be finished in 2015. And
6 the contract is supposed to be let in
7 October/November of this year.

8 MR. LANDEWEER: So this will be done by -- this
9 segment from here north will be finished by the time
10 this gets under construction (indicating).

11 MR. ANDERSON: And I should add one more wrinkle
12 to the petition that the Village is making.

13 What has delayed this project, to be
14 very honest, over the last year was the request by
15 two of the railroads for engineering review fees to
16 be paid up front, which then would be drawn from --
17 to reimburse those railroads' reviews. And that was
18 something that was not budgeted. We don't have the
19 federal funding or the ArcelorMittal funding to
20 cover those fees during the engineering phase.

21 The Village has asked the ICC to
22 consider whether it would be okay to pay those fees

1 during the construction phase. So the Village is
2 not looking to remove its role in paying those fees,
3 but they're trying to put it into a portion of the
4 budget where the monies are available and the monies
5 aren't there during this current engineering phase.

6 JUDGE KIRKLAND-MONTAQUE: Have you talked to
7 Commission Staff about that?

8 MR. ANDERSON: I think we have talked to Brian
9 about it.

10 MR. LANDEWEER: Yeah. We talked to Brian about
11 whether that would be a reasonable request to be
12 made and he basically said, Make the request.

13 MR. ANDERSON: Right.

14 JUDGE KIRKLAND-MONTAQUE: Okay. So basically
15 what is the next step that needs to be accomplished
16 in this matter? What are you guys working on?

17 MR. LANDEWEER: We would like the plan to be
18 reviewed by the railroads and start the process of
19 their review and our response to their review, as
20 well as the preparation of the agreements, I think
21 at this point.

22 MR. ANDERSON: And their review, you know, was

1 contingent on -- at least from two of the railroads,
2 in paying the review fees up front. So that's
3 what's stymied us for a year.

4 MR. LANDEWEER: So we are looking at, for this
5 project here, with the ICC money becoming available
6 next July. So we are looking at -- basically having
7 the project on an -- probably an August letting of
8 next year, which means that the final plans need to
9 be to IDOT approximately January of 2015, giving us
10 about four months, basically, to finalize the plans
11 and the drawings to go for a project letting.

12 MR. STREICHER: You said 2015. I thought you
13 meant 2014.

14 MR. LANDEWEER: No, '15.

15 MR. STREICHER: You want to begin letting in
16 August 2015?

17 MR. LANDEWEER: '15.

18 MR. STREICHER: And have IDOT approval in
19 December 2015?

20 MR. LANDEWEER: No, we would need to send the
21 final plans in -- I'm sorry -- around January of
22 2015.

1 MR. STREICHER: Okay.

2 MR. LANDEWEER: About four or five months from
3 now.

4 MR. SCHMIDT: Have you made this request for the
5 funding source as per the discussions with Brian?

6 MR. LANDEWEER: I think the request that we made
7 to delay the funding was made to the engineers that
8 had been reviewing it from CSX and Norfolk &
9 Southern, but it didn't go anywhere beyond that.

10 MR. GROBLE: And, Judge, I can tell you on
11 behalf of Norfolk & Southern, we are not willing to
12 waiver further preliminary engineering review fees.

13 JUDGE KIRKLAND-MONTAQUE: So, basically, you're
14 at a point where you want the Commission to
15 approve -- allow those fees to be paid out of the --

16 MR. ANDERSON: Construction phase of the
17 project.

18 JUDGE KIRKLAND-MONTAQUE: Okay.

19 MR. SCHMIDT: And you need to make a specific
20 request for that, I'm assuming?

21 MR. LANDEWEER: No, not a specific request.
22 It's in the petition.

1 MR. SCHMIDT: But you haven't made a specific
2 request to the ICC Staff for that.

3 MR. LANDEWEER: No.

4 MR. SCHMIDT: And I think, as Mr. Groble stated,
5 the position of the railroads is always that, you
6 know, for the review of engineering plans you got to
7 pay the fees.

8 MR. GROBLE: Right.

9 MR. LANDEWEER: That will be paid. We just want
10 to delay payment.

11 MR. ANDERSON: We're just asking to delay the
12 payment. We're not trying to absolve responsibility
13 for the fees at all.

14 MR. STREICHER: Judge, perhaps I can explain a
15 little bit better how the contracting process works.
16 At least on behalf of CSX Transportation, Inc., is
17 in a typical project, an entity or agency would
18 submit plans and CSX requires the execution of a
19 preliminary engineering agreement or PEA which is
20 also funded with a deposit to cover the costs of the
21 engineering review and comment portion of review of
22 the plans. If the monies are not expended, they're

1 refunded back.

2 Once that PEA process -- and there's
3 final approval -- is completed, then CSX will
4 typically enter into a construction agreement with
5 the entity and that includes all the plans as
6 they've been approved as well as a force account
7 estimate of costs.

8 I've read the petition. I understand
9 what petitioner is asking for here and I don't have
10 the ultimate word from CSX as to what, if anything,
11 they would do about waiting for those funds.

12 But, one, I'm not sure that the
13 Commission has the authority to order late payment.
14 And, two, I think the burden would be on the
15 petitioner here, or URS, to initiate contact and see
16 if there can be any accommodation there or, if not,
17 then make arrangement for it.

18 Absent our review of the plans, CSX
19 would oppose the project.

20 MR. GROBLE: Norfolk & Southern's position is
21 similar. I'd also point out that when we got the
22 petition we issued some preliminary discovery. And

1 I take the plans that we received last Friday as
2 partial compliance with it. But it's nowhere near
3 complete with respect to the funding and the
4 allocation of the costs and what burden is going to
5 be placed on the railroads with respect to any
6 maintenance of the structures on or about their
7 property and so forth.

8 So in Norfolk & Southern's view, it's
9 a worthy project, but we're kind of getting the cart
10 ahead of the horse as it's premature.

11 MR. STREICHER: If I can just add one other
12 thing, Judge.

13 When the plans were initially
14 submitted, I believe in June of 2013, CSX issued a
15 PEA and it was never returned. And I'm not aware of
16 any other communication between CSX and petitioner
17 about that.

18 MR. LANDEWEER: No, I don't think there has
19 been.

20 MR. STREICHER: Right.

21 JUDGE KIRKLAND-MONTAQUE: But you're aware that
22 they issued a PEA?

1 MR. ANDERSON: Well, we were in a position of
2 waiting to see if all four railroads were going to
3 submit similar requests and so we waited, basically.
4 We received requests from two of the railroads. So
5 we thought, What are our options? No, we don't have
6 the money available to pay the fees up front for
7 review.

8 You know, we thought that this was a
9 reasonable request to make to the ICC, not knowing
10 if you have the authority to make that order or not,
11 but we thought that would be a way to explain the
12 situation in a formal request that the
13 Village -- because of its economic conditions --
14 this is a fairly disadvantaged community -- that it
15 was a reasonable request.

16 And, no, we weren't trying to
17 relinquish responsibility for paying. We thought it
18 might be the simplest way to do it, to be honest.

19 MR. SERPE: Your Honor, the IHB's situation is
20 substantially similar to what has been stated. The
21 only difference I would like to point out is the IHB
22 doesn't have in-house capability to do the

1 engineering reviews. So they have to actually
2 retain consultants to do the actual review of that.

3 MR. GROBLE: Norfolk & Southern also does the
4 same thing. They don't review these in-house.

5 MR. STREICHER: As well as CSX.

6 MR. GROBLE: So it's not just Norfolk & Southern
7 or CSX or IHB personnel reviewing the plans and then
8 waiting to get paid for their time. Any of the
9 railroads would have to go out and expend money to
10 hire consultants to do this work.

11 JUDGE KIRKLAND-MONTAQUE: I'm just curious.

12 In a situation like this where you
13 have multiple railroads and there's one project, do
14 you ever coordinate and use the same type of
15 consultants on review?

16 MR. SCHMIDT: Well, I think this project
17 presents some very different and unique situations
18 and circumstances to each of the different railroads
19 involved.

20 I mean, for starters, you've got this
21 property acquisition issue with Norfolk &
22 Southern --

1 MR. GROBLE: Which I wasn't aware of.

2 MR. SCHMIDT: -- which is totally different and
3 separate and apart from anything that involves the
4 IHB, CSX or Chicago South Shore, that I'm aware.
5 It's not a property acquisition issue.

6 Then Norfolk & Southern has to deal
7 with the issue of having this trail built adjacent
8 to their track between -- I think that's a main
9 line, isn't it?

10 Right?

11 MR. GROBLE: Yes, it is.

12 MR. SCHMIDT: It's a main line track, which is a
13 serious piece of, you know, engineering here, in
14 conjunction with the grid -- the Commonwealth Edison
15 power grid that exists and some of these isolated
16 wetlands areas.

17 I don't know who else has been out
18 there, but Mr. Streicher and I have been there and
19 we walked a lot of this territory and this ground.
20 I'm sure Mr. Anderson has been out there. I mean,
21 this is not your typical everyday, Oh, well, here's
22 a street, here's a park and we're going to build a

1 bridge over it. I mean, there's some serious issues
2 of where this trail is going to go in conjunction
3 with the presence of the ComEd station, the
4 wetlands, the main line tracks and the extent of the
5 traffic that goes through all those main lines.

6 And then one of the other questions
7 is, is the extent of the approaches and what the
8 grade would be on the approaches, both, you know,
9 north and south. And my thought -- it's not so much
10 from the north to the south as it is from the south
11 to the north because you've got that Norfolk &
12 Southern property and then all of a sudden you've
13 got three mainlines, IHB, CSX and Norfolk &
14 Southern, that you've got to cross. You have to put
15 one heck of a grade in there.

16 I'm sorry. I'm being long-winded
17 here, but there are many different issues and many
18 different railroads.

19 I apologize.

20 JUDGE KIRKLAND-MONTAQUE: No. No. I
21 understand. I asked a question. You provided an
22 answer.

1 Did you have something to say

2 Mr. --

3 MR. STREICHER: On behalf of CSX, I think

4 Mr. Schmidt makes some good points overall.

5 But, on behalf of CSX, the question
6 initially was whether or not that can be some joint
7 engineering. We have a grade separation structure
8 that involves three railroads. There are a small
9 handful of consultants who work on these projects
10 for the railroads. It might be that petitioner
11 could approach, you know, the rail- -- petitioner
12 has to be proactive here and, perhaps, approach the
13 railroads and say, Is there a single consulting
14 review that could be done? I mean, URS, you know,
15 is a major player in this field.

16 You know how this works.

17 The other issues Mr. Schmidt raises
18 frankly, don't involve CSX and, I assume, you'll
19 handle those things.

20 But, my position would be that the
21 petition needs to be proactive here rather than, you
22 know, try and seek some order from the ICC about

1 deferring payment that, one, I'm not sure the ICC
2 has the jurisdiction to do so; and, two, it puts our
3 clients in a very difficult position in that while
4 we all would like this project to go forward and see
5 it as a good thing, we don't know that it's going to
6 happen. And as Mr. Serpe noted, our clients are out
7 the monies up front to pay the consultants for the
8 engineering review.

9 MR. ANDERSON: I'll make one comment in terms of
10 the outreach.

11 I did talk to Sarah Czaplocki --

12 MR. SCHMIDT: Czaplicki.

13 MR. ANDERSON: -- Czaplicki from Patrick
14 Engineering specifically on that idea, you know,
15 could one engineering firm cover all the railroads.
16 I talked to her on September 24th of last year --

17 MR. SCHMIDT: Of 2013.

18 MR. ANDERSON: Of 2013, right.

19 -- and she was uncertain. She said
20 she would have to talk to higher-ups. She didn't
21 think so. That's about as far as it went. I never
22 got a callback saying that it was possible.

1 But I just want to make a point that,
2 you know, we did -- we still want to outreach to see
3 if that might be possible.

4 MR. SCHMIDT: But I think that's a point that
5 Mr. Streicher is making here is that, you know,
6 they're the petitioner. If they want this project
7 to go forward, they need to be more proactive in
8 terms of how this is going to get accomplished
9 involving all the various railroads involved in what
10 can or cannot be done.

11 And they submitted these plans over a
12 year ago and nothing happened beyond that point
13 because there was no funding for paying for the
14 review of the plans. And, as Mr. Streicher said, a
15 PEA was actually created by CSX and sent to the
16 Village and was never executed.

17 So -- I mean, the fact that
18 Mr. Anderson talked to somebody -- an outside
19 consultant at CSX a year ago -- 11 months ago, you
20 know, that's not very helpful to the railroads'
21 understanding, you know, why we're here today and,
22 you know, why we're dealing with this being brought

1 in front of the Commerce Commission and us, you
2 know, being respondents in court.

3 JUDGE KIRKLAND-MONTAQUE: Have you spoken with
4 Commission Staff about all possible funding
5 mechanisms available?

6 Has Brian been able to assist you in
7 that regard, or someone else?

8 MR. LANDEWEER: My conversation with Brian was
9 that he -- he knows the project very well. We met
10 on site a couple of times. And his recommendation
11 was to go ahead and file a combined petition at this
12 point just to bring everything -- to bring everybody
13 to the table all at once and try to get, you know,
14 some of these issues resolved up front.

15 So that was their recommendation, to
16 file the petition.

17 JUDGE KIRKLAND-MONTAQUE: I see.

18 Well, it sounds like things are still
19 in a very preliminary stage. And I don't know if
20 Commission action right now is -- you know, may be
21 premature.

22 Now that all the parties -- and I

1 don't know how much communication has been going
2 on -- I've seen the Norfolk & Southern
3 interrogatories and things on file. So it appears
4 to me that things need to progress a little more in
5 terms of the parties communicating to see whether
6 there are economies of scale that can be achieved by
7 you guys cooperating to some extent, to find out if
8 there's any other funding sources available that
9 might be -- you might be able to use.

10 And, again, Brian is not here, or
11 whomever the Commission Staff person is, is not here
12 to give me -- and I trust that you had conversation
13 with him -- but I think things are a bit early yet
14 and I think that -- I think the benefit of having a
15 status hearing is that the parties are together.

16 And I think that I can keep this on my
17 calendar and hold another status hearing in a couple
18 months with the hopes that you guys continue to
19 communicate and, at least, get some more information
20 in terms of how, if possible, the railroads can
21 coordinate or collaborate with one another. I know
22 there's a funding problem.

1 You know, I'm thinking -- I can't
2 think of any other case that come to mind, but it
3 would seem that this -- it would seem to me that
4 this type of issue may have come up in other
5 instances and maybe that's something that should be
6 explored as well.

7 So having said that -- is there
8 anything else that anyone would like to add?

9 MR. GROBLE: Well, Judge, I would just say that,
10 you know, we're here responding to the petition.
11 And while we would be glad to play our role in this
12 project, I agree with Mr. Schmidt and Mr. Streicher,
13 the burden is on the petitioner to -- as you know,
14 most petitions at this point are more fully formed.
15 We have budgets. The railroads have reviewed them.
16 They've reviewed the engineering. They've had a
17 preliminary engineering review. And they're ready
18 to move forward or they have decisions that have to
19 be worked out with the Commission.

20 And, you know, my client's position is
21 that we aren't even close to that because all we
22 have is some plans that were sent to us. We don't

1 have any description of the funding. We don't have
2 any description of the maintenance obligation, which
3 is what our discovery was designed to get at.

4 And, while I know that my client's
5 people are happy to talk to you. And I will say,
6 while people are happy to talk to you, they're going
7 to be looking for you to be the laboring oar, not
8 the railroads.

9 MR. ANDERSON: I guess the only last comment I
10 would have is when we sent out the engineering to
11 all four railroads for review, we really to this
12 date have only heard from Norfolk & Southern and CSX
13 with the requirement that engineering monies be put
14 up front. We haven't heard from NICTD or Indiana
15 Harbor, though. And it's important for us to know
16 if a similar request was going to come in or not.
17 We've waited six months or nine months and haven't
18 heard that there would be engineering fees.

19 So we're a little unclear if we're
20 looking to just find funding, which I think is going
21 to be difficult, for only Norfolk & Southern and CSX
22 or will there be a later request that may come and

1 could delay it again.

2 So we need to understand -- it would
3 be good if we understood even months ago whether
4 we'd be reimbursing four railroads or only two. We
5 don't know what we're looking for in terms of
6 funding.

7 MR. SERPE: Your Honor, if the IHB hadn't
8 indicated that, it's only because, again, not only
9 do we not have this expertise in-house and we have a
10 very limited maintenance of way staff and, as was
11 explained earlier, the typical way of this
12 happening, these fees are paid up front.

13 So I don't know if our people
14 understood, they needed to specifically indicate to
15 you the necessity of the fees being paid; but,
16 again, it's kind of the standard procedure.

17 MR. ANDERSON: I think we need to know what the
18 fees are.

19 MR. PTASINSKI: CSS is in a similar position.
20 We can certainly act quickly on that. But, again --

21 MR. ANDERSON: No, we have a letter from CSX.

22 MR. PTASINSKI: No, CSS, Chicago South Shore.

1 MR. ANDERSON: Oh, South Shore. Excuse me.

2 MR. SCHMIDT: There's another thing that you
3 just mentioned. You just mentioned NICTD. NICTD is
4 a separate entity from any of the four railroads
5 that are represented here today.

6 So is NICDT another entity that needs
7 to be involved in this review?

8 MR. LANDEWEER: No. We've had conversations
9 with NICDT and they have referred everything to
10 South Shore.

11 MR. SCHMIDT: South Shore. Okay.

12 JUDGE KIRKLAND-MONTAQUE: Who is NICDT? Help me
13 out.

14 MR. SCHMIDT: Northwest Indiana Commuter
15 Transportation District?

16 MR. LANDEWEER: Yes.

17 JUDGE KIRKLAND-MONTAQUE: Okay. And, you know,
18 I hear the respondents' position in that, you know,
19 if that's information that you need, then keep
20 knocking on the door till you get it. Surely at
21 some point someone will reply, you know.

22 Again, being a little more proactive

1 might be helpful. And I know you've been doing what
2 you can.

3 And I think part of the problem, to be
4 honest with you -- and I actually need to consider
5 this -- is that without legal counsel on behalf of
6 the Village, that may be why you're stymied quite a
7 bit. And there's actually been some new cases
8 coming out that would kind of prevent the Commission
9 from even hearing a case without legal
10 representation of a legal entity like the Village.

11 So I don't know who's making the
12 decisions at the Village, but that's something that
13 should be considered, I think, because I think
14 that's, in my view, why things perhaps haven't moved
15 along as they should. So you may want to take that
16 back to whomever you would report to.

17 Okay. Is there anything else anyone
18 would like to add?

19 MR. SCHMIDT: I would just like to ask, has this
20 been submitted (indicating)?

21 MR. LANDEWEER: No. No. I just brought that as
22 an exhibit today.

1 MR. SCHMIDT: Okay. Is there some way you can
2 submit this to each of the railroads?

3 MR. LANDEWEER: Sure.

4 MR. SCHMIDT: This is a very helpful -- again,
5 after having been at the scene, this is a very
6 helpful map to show, you know, where the trail is
7 going to be built and how it connects in various
8 locations.

9 MR. LANDEWEER: Sure.

10 MR. SCHMIDT: So if we can get a copy of this,
11 that would be very helpful.

12 MR. LANDEWEER: Can I have everybody's cards?

13 MR. SCHMIDT: Sure.

14 JUDGE KIRKLAND-MONTAQUE: Before we do that,
15 just so I can move along. I'm going to set this for
16 another status and I'm going to set it -- I'm
17 thinking, maybe 90 days.

18 MR. GROBLE: I think that's about right.

19 MR. SCHMIDT: Are we on the record here?

20 JUDGE KIRKLAND-MONTAQUE: Let's get off the
21 record.

22

1 (Whereupon, a discussion
2 was had off the record.)
3 JUDGE KIRKLAND-MONTAQUE: Back on the record.
4 This matter will be continued for
5 another status hearing on Thursday, November 13th
6 at 10:00 a.m., here in Chicago.
7 Thank you very much.
8 MR. SCHMIDT: Thank you, Judge.
9 MR. STREICHER: Thank you.
10 MR. ANDERSON: Thank you.
11 (Whereupon, the above-entitled
12 matter was continued to
13 November 13, 2014.)
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